AN

# ACT

For the Preventing

# FRIVOLOUS,

AND

# VEXATIOUS

# Law-Sutes;

AND

Giving Remedy to the Parties Grieved, to Recover their Coſts at Law, in certain Caſes, where heretofore no Coſts were given.

*DUBLIN:*

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# An ACT for the Preventing Frivolous, and Vexatious Law-Sutes, and giving Remedy to the Parties Grieved, to Recover their Coſts at Law, in certain Caſes, where heretofore no Coſts were given.

CHAP. XXXV.

WHEREAS it is found by daily Experience, in the Courts at Law, that divers Malicious, and Evil Diſpoſed perſons, on purpoſe, without any juſt Cauſe of Sute, do make ſeveral Innocent perſons, Defendants, joyntly with others, againſt whom they conceive they have good Cauſe of Action; and ſo, tho' ſuch Innocent perſon or perſons, ſo joined in the ſaid Action, ſhall be found (not Guilty) and Acquitted of the ſaid Action; Yet if any of the other Joint Defendants ſhall be found Guilty, and a Verdict paſs againſt them, by the Common Laws of this Realm; ſuch Defendant, or Defendants ſo Acquitted, after all his, or their Trouble and Expence, in Defending ſuch Action, is without Remedy to recover any Coſts of Sute againſt ſuch Plantiffs, for ſuch his, or their unjuſt Veration, contrary to all Reaſon and Juſtice. For Remedy whereof:

Be it Enacted by the King's Moſt Excellent Majeſty; by, and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament Aſſembled, and by Authority of the ſame, That from, and after

after the First Day of May, which shall be in the Year of Our Lord God, One thousand Six hundred and Ninety eight; if any person or persons, shall be made Defendant, or Defendants with others, in any Action, Sute, or Plaint, in Trespass Quare Clausum fregit, or Trespass of Assault and Battery, and such person or persons, so joyned in such Action, shall upon Tryal of the same, be Acquitted by Verdict, altho' the other Defendant, or Defendants, in such Action, shall be found Guilty, and a Verdict pass against him, or them therein, every such person and persons so Acquitted, shall have, and Recover his, and their Costs of Sute, for such his, and their unjust Veration, as if a Verdict had been given against such Plantiff, or Plantiffs, or a Verdict had been given for all the Defendants in such Action, unless the Judge or Judges, before whom such Cause shall be Tryed, shall immediately after the Tryal thereof, in open Court, Certifie upon the Record under his Hand, that there was a reasonable Cause, for the making such person or persons, Defendant or Defendants to such Action or Plaint.

And Whereas by the Law, as it now stands, no Costs of Sute can be awarded, or given to any person or persons, in any Action that shall happen to recover, or have any Judgment given for him upon any Demurrer in Law, by reason whereof many contentious persons, make use of such manner of Delays, on purpose to keep others from their Just Right, or otherwise intending thereby, to Weary them into some small Composition, for what is really due unto them.

For

For Remedy whereof, be it further Enacted, That if it at any time from, and after the said First Day of May, any person or persons, who shall Commence, or Prosecute any Action, or Plaint, in any Court of Record, whereupon any Demurrer, or Demurrers shall be joyned, by any Plantiff, or Defendant, Demandant, or Tennant, in any such Sute or Sutes, he or they, for whom Judgment or Judgments shall be given, upon any such Demurrer or Demurrers, shall have, and recover, his and their Costs of Sute, to be awarded by the Court in such like manner, as if such Judgment or Judgments had bẽn given, or recovery had by such party or parties, upon Action tryed by Jury, and Verdict passed for such party therein; and that if any person or persons, from, and after the First Day of May, as aforesaid, shall obtain such, or any other Judgment or Judgments, in any His Majesty's Courts of Record in this Kingdom, or any the Courts of the County Palatine of Tipperary, and the person or persons against whom such Judgment or Judgments shall be so given, shall in delay of Execution thereupon, and with intent to annul such Judgment or Judgments, Sue forth any Writ or Writs of Error; and afterwards the said Judgment or Judgments, shall be Affirmed, or the said Writ or Writs of Error Discontinued, or the Plantiff or Plantiffs therein, become Non-sute; that then, and in every such Case, the party or parties against whom such Writ or Writs shall be so brought, shall recover his and their Costs and Damages, at the discretion of the Justices before whom such Writ or Writs shall be so Sued, and to have Execution for

ſuch his or their Damages or Coſts, ſo recovered by Writs of Capias ad Satisfaciendum, Fieri Facias, or *Elegit*, or any of them, at the Election of ſuch Party or Parties for whom ſuch Damages and Coſts ſhall be ſo awarded.

And whereas by the Laws of this Realm, no Coſts of Sute are Recoverable in any Action of Waſte, or Debt, to be brought upon the Statute, for not ſetting forth of Tiths, nor in any Writ of Scire Facias, or Prohibition, which hath bæn found very Miſchievous and Prejudicial to the Sutors in ſuch Actions, and to ſuch Perſons, as for the recovering their juſt Rights have bæn Forced to Sue forth the ſame. For Reformation Whereof, for the future.

Be it further Enacted by the Authority aforeſaid, That from, and after the Firſt day of May, aforeſaid, if any perſon or perſons bring any Action of Waſte, or Action of Debt, upon the Statute, for not ſetting forth of Tyths, in Which ſaid ſeveral Actions, the Single Value, or Damage Found by the Jury, or Juries, in any ſuch Action, ſhall not exceed the Summ of Three pounds, the Plantiff or Plantiffs recovering, either by Judgment upon Verdict, or Demurrer in ſuch Action or Actions, ſhall likewiſe have and recover his and their Coſts of Sute, at the like Diſcretion of the Juſtices before Whom ſuch Writ or Writs ſhall be brought, and Judgment or Judgments therein given, as alſo if any perſon or perſons ſhall after the time aforeſaid, Sue forth any Writ or Writs of Scire Facias, or Commence any Sute or Sutes in prohibition, and recover, and have Judgment in the ſame, either by Verdict or upon Demurrer, every ſuch Plantiff or

Plantiffs

Plantiffs ſo recovering, ſhall likewiſe have, and recover his and their Coſts of Sute in ſuch Action or Actions, at the Diſcretion of the Juſtices, before whom ſuch Recovery ſhall be ſo had; and if it ſhall happen in any the Sutes aforeſaid, that the Plantiff or Plantiffs in ſuch Action or Actions, ſhall become Non-Sute, or Uerdict, or Uerdicts paſs againſt him or them, in ſuch Sute or Action, or he, or they ſhall diſcontinue ſuch his or their Sute or Action: Then (in all ſuch Caſes) the Defendant, or Defendants, in ſuch Action or Actions, ſhall have and recover his and their Coſts of Sute in ſuch manner as ſuch Plantiff or Plantiffs ſhould have done, if he or they had Recovered, and had Judgment given for them in ſuch Action or Actions, as aforeſaid, any Law, Cuſtom, Practice, or Uſage to the contrary thereof, in any-Wiſe notwithſtanding.

And that in all the Actions aforeſaid, where any of the party or parties to the ſame, ſhall ſo recover their Coſts of Sute, it ſhall, and may be Lawful to, and for them, or any of them to Sue forth Execution for ſuch his or their Coſts by Writs of Capias ad Satisfaciendum, Fieri Facias, or Elegit, as aforeſaid.

And for the preventing Willful and Malicious Treſpaſſes, to be brought for the future.

Be it further Enacted, that from and after the Firſt day of May aforeſaid, in all Actions of Treſpaſs to be Commenced and Proſecuted in any of His Majeſty's Courts of Record at Dublin; Wherein at the Tryal of the Cauſe it ſhall appear, and be Certified by the Judge, or Judges, before whom ſuch Cauſe ſhall be Tryed under his or their Hands, on the back of the Record,

Record, that the Trespass upon which any Defendant shall be found Guilty, was Willfully and Maliciously committed; In every such Case, the Plantiff shall not only recover his Damages, assessed by the Jury, but his full Costs of Sute, to be Taxed for him by the Direction of the Court, where such Action shall be Tryed.

Provided nevertheless, That no Alteration of the same shall be made in any the Cases aforesaid, Where any Executor or Administrator shall be Defendant, in any the Actions, or Sutes aforesaid, so at any time hereafter to be brought against them; but that in all such Cases, they shall not be lyable, or subject to payment of any Costs of Sute, otherwise, or in any other manner then as the Law, now requires.

And for the preventing the Abatement and Discontinuance of Process for the future, in certain Cases, and the helping the Law in the particulars following.

Be it likewise Enacted by the Authority aforesaid, That in all Actions to be Commenced, or brought in any Court of Record within this Kingdom, from, and after the First day of May aforesaid, if it shall happen that any person or persons, being Plantiff or Plantiffs in such Action or Actions, shall die after he or they shall have obtained any Interlocutary Judgment, or Judgments, in such Action or Actions, and before a full and final Judgment or Judgments given therein, the Death of such Plantiff or Plantiffs, shall not abate such Action or Actions or hinder the further proceedings of such Cause, but that notwithstanding such dying of such Plantiff or Plantiffs, his or their Executors,

cutors, or Administrators, may proceed to Final Judgment against the Defendant or Defendants, in such Action or Actions, as is hereafter set forth. (If such Action or Actions, shall happen to be such, as by Law may, or might have been Commenced, or Maintained Originally by any Executor or Administrator) as such Plaintiff or Plaintiffs aforesaid, might have done, if alive. And if it shall happen, that in any such Action or Actions, the Defendant or Defendants in the same, shall die after such Interlocutary, and before such Final Judgment or Judgments obtained, as aforesaid, such dying shall not abate such Action or Actions, but that then, notwithstanding the Death of such Defendant or Defendants, it shall and may be Lawful to, and for such Plaintiff or Plaintiffs, in such Action or Actions, if Living, and if Dead, his Executor or Administrator, to Prosecute such their Action or Actions against the Executors or Administrators of such Defendant or Defendants, and proceed against them to Final Judgment therein, as is likewise hereafter in that behalf set forth and provided, as if the said Defendant or Defendants, themselves, had been Living; if such Action or Actions be such as may, or might by Law be Originally brought and prosecuted against an Executor or Administrator.

And that in Case of the Death of such Plaintiff or Plaintiffs, as aforesaid, it shall, and may be Lawful to, and for his, and their Executors, or Administrators, or any of them, to Sue forth, and Prosecute one, or more Writ or Writs of Scire facias, against the Defendant or Defendants, in such Action or Actions, if then Living, or if Dead, against the Executors, or Admini-

ſtrators of ſuch Defendant or Defendants, for Reviving and Continuing ſuch Sute, or Sutes, till Judgment final ſhall be given therein; and in Caſe of the Death of ſuch Defendant, or Defendants, as aforeſaid, it ſhall and may be lawful, to, and for ſuch Plantiff or Plantiffs (if living) and if Dead, his or their Executors, or Adminiſtrators, or any of them, in like manner to Sue forth, and Proſecute one, or more Writ, or Writs of Scire Facias againſt the Executors, or Adminiſtrators of ſuch Defendant, or Defendants, for Reviving and Continuing ſuch Sute or Sutes, till Judgment final ſhall be given therein, as aforeſaid; the Effect of which ſaid Writ, or Writs of Scire Facias, ſhall be for the party or parties againſt whom the ſame ſhall be Awarded, to ſhew cauſe, why notwithſtanding, ſuch the Death of any the parties to ſuch Sute or Sutes, aforeſaid; The Plantiff, or Plantiffs in the ſaid Writ or Writs, of Scire Facias, his, or their Executors, or Adminiſtrators, ſhould not proceed to Judgment final therein, for the Recovery of ſuch Debt or Damage, for which ſuch Action or Actions, was at firſt brought. And if at the Return of ſuch Writ or Writs, of Scire facias, the Defendant or Defendants, named therein, ſhall appear, but not ſhew ſufficient Cauſe to ſtay, or Arreſt the Judgment final, or in default of ſuch Appearance, it ſhall be Returned, that ſuch Defendant or Defendants were duly Warned, or after Two ſuch Writs of Scire Facias returned; it be returned that the ſaid Defendant, or Defendants could not be found in the Bailiwick where ſuch Summons Iſſued, or that they had nothing in the ſaid Bailiwick, by which

they

they, or any of them could be Summoned, that then, in every ſuch Caſe, One or more Writ, or Writs of Inquiry of Damage, ſhall be Awarded for the Plantiff or Plantiffs, in ſuch Writ, or Writs of Scire Facias, againſt ſuch Defendant, or Defendants therein named; upon return of which ſaid Writ, or Writs of Inquiry, duly Executed, Judgment final ſhall be given for every ſuch Plantiff or Plantiffs, againſt every ſuch Defendant or Defendants, in ſuch Writ, or Writs of Scire Facias, as aforeſaid.

And be it further Enacted, for the Purpoſes aforeſaid, That if at any time after the time Limitted, as aforeſaid, Two or more perſons ſhall be Joyntly Plantiffs in any Action or Actions, againſt Two or more perſons, likewiſe Joyntly named Defendants therein, the Death or Deaths, of One or more of ſuch Plantiff or Plantiffs, or ſuch Defendant or Defendants, ſhall not abate ſuch Writ or Writs, in ſuch Action or Actions, but that the ſame being ſuggeſted upon the Roll, or Record, of ſuch Action or Actions, it ſhall, and may be lawful to, and for the Surviving Plantiff or Plantiffs, in ſuch Action or Actions, to proceed to Judgment againſt the Surviving Defendant or Defendants, in the ſame, as if ſuch Death had not been.

And Whereas by the Law, as it now ſtands, if any Action or Sute be Commenced, or brought upon any Bond, or other penal Summ, for performance of Covenants, or other Agreements, in any Deed or Indenture; The party that brings the ſame, can Aſſign only One Breach of Covenant, altho there are in Truth ſeveral Breaches Committed, of which the party Plantiff in ſuch Action, can have no Benefit, or Reparation, not with-

withſtanding, that he is really Damnified by Reaſon thereof. For Remedy whereof.

Be it further Enacted by the Authority aforeſaid, That in all Actions, which from, and after the ſaid Firſt Day of May, ſhall be Commenced, or Proſecuted in any of His Majeſty's Courts of Record, in this Kingdom, or any the Courts of the County Palatine of Tipperary, upon any Bond or Bonds, or on any Penal Summ, for Non-performance of any Covenants, or Agreements, in any Indenture, Deed, of Writing contained, the Plantiff or Plantiffs, may Aſſign as many Breaches of the ſaid Covenants, or Agreements, as he, or they ſhall think fit: And thereupon, it ſhall and may be Lawful, for the Jury, upon ſuch Tryal of ſuch Action or Actions, not only to Aſſeſs ſuch Damages, and Coſts of Sute as have been heretofore uſully done in ſuch Caſes; but alſo to give Damage for ſuch of the ſaid Breaches, ſo to be Aſſigned, as ſuch Plantiff or Plantiffs, upon ſuch Tryal of the Iſſues taken therein, ſhall prove to have been Broken, and that the like Judgment or Judgments ſhall be Entred on every ſuch Verdict or Verdicts, as heretofore have been uſually done in ſuch like Caſes. And if it ſhall happen, that ſuch Defendant or Defendants, ſhall not Plead to the Iſſue, but Judgment ſhall be given againſt him or them for ſuch Plantiff or Plantiffs, upon Demurrer, or by Nihil dicit, Non ſum Informatus, Cognovit Action. or the like; then, and in ſuch Caſe, it ſhall and may be Lawful, to, and for ſuch Plantiff or Plantiffs, to ſuggeſt upon the Roll of Record, in ſuch Action or Actions, ſuch, and as many Breaches of the ſaid Covenants and Agreements, as he or they ſhall think fit,

ſit upon which ſaid Suggeſtion, one, or more Writ, or Writs, ſhall Iſſue, directed to the Sheriff of that County, where ſuch Action or Actions ſhall be brought, to Summon a Jury to appear before the Juſtice, or Juſtices of Aſſize, or Niſi prius, at their next coming into that County, to enquire of the Truth of every one of thoſe Breaches, and ſuch Jury, to Aſſeſs the ſaid Damages ſeverally, which the ſaid Plantiff or Plantiffs ſhall have ſuſtained, for every of the ſaid Breaches ſo Aſſigned, as aforeſaid; in which ſaid Writ, it ſhall be likewiſe Commanded to the ſaid Juſtice, or Juſtices of Aſſize, or Niſi prius, before whom ſuch Damages ſhall be ſo given, that he, or they ſhall make a full and certain Return of the ſaid Writ or Writs, and the due Execution thereof to the Court from which the ſame ſhall ſo Iſſue, according to the Exigency thereof, and the time therein mentioned; which ſaid Writ or Writs ſo returned, ſhall be Filed, and thereupon Judgment or Judgments, ſhall be Entred in the ſaid Court, on ſuch Return, as in Caſes of Writs of Enquiry of Damages, of the like nature. And in Caſe the Defendant or Defendants, after ſuch Judgment Entred, and before Execution Executed, ſhall pay into the Court, where the ſaid Action ſhall be brought, to the uſe of the Plantiff or Plantiffs, his or their Executors, or Adminiſtrators, ſuch Damages ſo Aſſeſſed by the Jury, by reaſon of all, or any the Breaches of ſuch Covenants, together with the Coſts of Sute, that then a Stay of Execution ſhall be Entred upon the Record of the ſaid Judgment, and made accordingly for that time, as alſo, Whenſoever it ſhall happen, that by reaſon of any Execution Sued forth,

and Executed upon such Judgment, the Plaintiff or Plaintiffs, his or their Executors, or Administrators, shall be fully Satisfied or Paid, all his or their Debt or Damages so Assessed, or the Penalty of such Bond, or Bill penal, at the Election of the Defendant, together with his or their Costs of Suite, and all reasonable Charges and Expences for Executing the said Execution; that then, and from thenceforth, the Body, Goods, and Lands of such Defendant, shall be discharged from such Execution, which said Discharge, shall likewise be Entred upon the Record of the Roll of the said Judgment. Yet it is hereby declared, That notwithstanding such Discharges, or Stay of such Executions, and the Entry or Entries of either, or any of them, as aforesaid, upon Record, where such Damages do not amount to the Penalty of such Bond or Bill Penal, such Judgment or Judgments, shall still remain, continue, and be in full Force, Vigour, and Effect to the purposes hereafter mentioned (That is to say) As a further Security to answer to such Plantiff or Plantiffs, and his, or their Executors, or Administrators; all such Damages as shall, or may be at any time afterwards sustained, for, or by reason of any further Breach of any the Covenant or Covenants in such Indenture, Deed, or Writing contained, if any such shall happen to be, and no Satisfaction be made for the same, as aforesaid, as far as the Remainder of such Penalty, after the payment of the Damage formerly Recovered out of the same, will reach; upon which said Breach or Breaches, such Plantiff, or Plantiffs may have, and shall be at Liberty to Sue forth a Writ of Scire facias upon the said Judgment against

againſt ſuch Defendant or Defendants, his, or their Executors, or Adminiſtrators, or againſt his Heirs, or Ter-tenants, Grounded upon Suggeſtion of other Breach or Breaches of the ſaid Covenants or Agreements, upon the Roll of the ſaid Judgment, as aforeſaid; and thereupon to Summon him or them reſpectively to ſhew Cauſe why Execution ſhould not be had or awarded upon the ſaid Judgment; upon which, there ſhall be the like proceedings as was in the Original Action of Debt, brought upon the ſaid Bond or Obligation, for Aſſeſſing of Damages, upon Tryal of Iſſues, Joyned upon ſuch Breaches; or in Caſe of Default upon a Writ of Inquiry thereof, to be awarded in manner as aforeſaid.

Provided always, That upon Payment, or Satisfaction to be made of all ſuch future Damages, Coſts and Charges, in manner as aforeſaid, or of ſo much of ſuch future Damages as the Remaining Summ of the Penalty of ſuch Bond or Bill Penal, after Payment and Satisfaction for the Damages formerly recovered will extend unto, together with Coſts of Suit, all further proceedings, or the ſaid Judgment ſhall again be ſtayed, and ſo Toties quoties (as Occaſion ſhall Require) upon every new Breach, the ſaid Judgment to be made uſe of as far as aforeſaid, and no further, and upon Satisfaction made in manner aforeſaid, the Defendant his Body or Goods and Lands to be again Freed and Diſcharged out of Execution, as aforeſaid.

FINIS.